

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 107

May 15, 1958

APPLICATION OF SECTIONS 18091-18100

Syllabus:

Advice is requested concerning the application of Sections 18091-18100 in cases where a change in residence status accompanies the sale of an old home and the purchase of a new one:

(1) Taxpayer, while a resident of California, sells his principal residence at a gain and thereafter establishes residence outside this state. Is the gain recognized if taxpayer purchases a new principal residence outside California within the time specified?

(2) Taxpayer, while a nonresident of California, sells his principal residence at a gain and thereafter establishes residence within California. If he purchases a principal residence in California within the specified time of Section 18091 is the basis determined by Section 18095?

(3) If the taxpayer in Question 1 sold the residence purchased outside California, returned to California to again establish, and thereafter purchased a principal residence within the specified time, would the basis of the first California home be reflected in the second California home?

The guiding principle for the applicability of Sections 18091-18100 is that the sections apply wherever their application would be relevant to the determination of net income taxable in California.

In Question 1, since the old residence was located in California, any gain resulting from its sale would be income from California sources regardless of whether the taxpayer was a resident or nonresident at the time of the sale of the old residence or the purchase of a new residence. Therefore, the provisions regarding nonrecognition of gain are applicable. The statute does not withhold the benefit of nonrecognition from those taxpayers who purchase a new residence outside the State even though they may be beyond the State's jurisdiction for tax purposes when the gain ultimately becomes recognizable.

In Question 2, the tax basis of the new residence in California is relevant to the determination of possible future net income taxable in California. Therefore, the tax basis should be as provided in Section 18095. Although this may often be to the taxpayer's disadvantage in that he may acquire a low tax basis for the new California residence without having received any California

tax benefit through nonrecognition of gain on the sale of the old residence outside California (that gain not being taxable by California in any event), the provisions of Section 18095 are not elective and are not made inapplicable to this situation by anything stated in the statute.

In Question 3 also, the basis of the third residence should be as provided in Section 18095. The intervening purchase and sale of a residence outside California would not prevent the basis of the first California residence from being carried over to the second California residence.